

JAN 17 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ARMANDO BALTAZAR-GARCIA,

Defendant - Appellant.

No. 04-10499

D.C. No. CR-03-02202-DCB

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted January 9, 2006^{**}

Before: HUG, O'SCANNLAIN and SILVERMAN, Circuit Judges.

Armando Baltazar-Garcia appeals the sentence imposed following his guilty plea to entering the United States without authorization after having been deported or removed in violation of 8 U.S.C. § 1326.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Baltazar-Garcia contends that the district court erred in applying the Sentencing Guidelines as mandatory when imposing his sentence. Because Baltazar-Garcia was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084-85 (9th Cir. 2005) (en banc). See *United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional error under *United States v. Booker*, 125 S. Ct. 738 (2005)).

REMANDED.